98TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 98-1091

# WINE EQUITY AND EXPORT EXPANSION ACT OF 1984

SEPTEMBER 27, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

## REPORT

[To accompany H.R. 3795]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3795) to harmonize, reduce, and eliminate barriers to trade in wine on a basis which assures substantially equivalent competitive opportunities for all wine moving in international trade, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Wine Equity and Export Expansion Act of 1984".

**SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) there is a substantial imbalance in international wine trade resulting, in part, from the relative accessibility enjoyed by foreign wines to the United States market while the United States wine industry faces restrictive tariff and nontariff barriers in virtually every existing or potential foreign market;

(2) the restricted access to foreign markets and the continued low prices for United States wine and grape products adversely affect the economic position of our Nation's winemakers and grape growers, as well as all other domestic sectors that depend upon wine production;

(3) the competitive position of United States wine in international trade has been weakened by foreign trade practices, high domestic interest rates, and unfavorable foreign exchange rates;

(4) wine consumption per capita is very low in many major non-wine producing markets and the demand potential for United States wine is significant; and

(5) the United States winemaking industry has the capacity and the ability to export substantial volumes of wine and an increase in United States wine exports will create new jobs, improve this Nation's balance of trade, and otherwise strengthen the national economy.

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(b) PURPOSES.—The purposes of this Act are—

(1) to provide wine consumers with the greatest possible choice of wines from wine-producing countries;

(2) to encourage the initiation of an export promotion program to develop, maintain, and expand foreign markets for United States wine; and

(3) to achieve greater access to foreign markets for United States wine through the reduction or elimination of tariff barriers and nontariff barriers to (or other distortions of) trade in wine.

**SEC. 3. DEFINITIONS.**

For purposes of this Act—

(1) The term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(2) The term "grape product" means grapes and any product (other than wine) made from grapes, including, but not limited to, raisins and grape juice, whether or not concentrated.

(3) The term "major wine trading country" means any foreign country, or group of foreign countries, designated as such under section 4.

(4) The phrase "nontariff barrier to (or other distortion of)", in the context of trade in United States wine, includes any measure implemented by the government of a major wine trading country that either gives a competitive advantage to the wine industry of that country or restricts the importation of United States wine into that country.

(5) The term "Trade Representative" means the United States Trade Representative.

(6) The term "United States wine" means wine produced within the customs territory of the United States.

(7) The term "wine" means any fermented alcoholic beverage that—

(A) is made from grapes or other fruit;

(B) contains not less than 0.5 percent alcohol by volume and not more than 24 percent alcohol by volume, including all dilutions and mixtures thereof by whatever process produced; and

(C) is for nonindustrial use.

**SEC. 4. DESIGNATION OF MAJOR WINE TRADING COUNTRIES.**

(a) DESIGNATION OF COUNTRIES.—The Trade Representative shall designate as a major wine trading country each foreign country, or group of foreign countries represented as an economic union, that, in the judgment of the Trade Representative—

(1) is a potential significant market for United States wine; and

(2) maintains tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(b) DESIGNATION FACTORS.—In deciding, for purposes of subsection (a)(2), whether a foreign country or group of countries maintains nontariff barriers to (or other distortions of) trade in United States wine, the Tade Representative shall take into account—

(1) the review and report required under section 854(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2135 note);

(2) such relevant actions that may have been taken by that country or group since that review was conducted; and

(3) such information as may be submitted under section 6 by representatives of the wine and grape products industries in the United States, as well as other sources.

**SEC. 5. ACTIONS TO REDUCE OR ELIMINATE TARIFF AND NONTARIFF BARRIERS AFFECTING UNITED STATES WINE.**

(a) TRADE REPRESENTATIVE CONSULTATIONS.—The President shall direct the Trade Representative to enter into consultations with each major wine trading country to seek a reduction or elimination of that country's tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine.

(b) PRESIDENTIAL REPORTS.—(1) The President shall notify each of the Committees regarding the extent and effect of the efforts undertaken since the submission of the report required under section 854(a) of the Trade Agreements Act 1979, and during the 12-month period beginning on the date of the enactment of this Act, to expand opportunities in each major wine trading country for exports of United States wine. Such notification, which shall be in the form of a separate written report (that must be submitted within 30 days after the close of that 12-month period) for each major wine trading country, shall include—

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(A) a description of each act, policy, and practice (and of its legal basis and operation) in that country that constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine (and that description shall be based upon an updating of the report that was submitted to the Congress under section 854(a) of the Trade Agreements Act of 1979);

(B) an assessment of the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party;

(C) information with respect to any action taken, or proposed to be taken, under existing authority to eliminate or reduce each such act, policy, or practice, including, but not limited to—

(i) any action under section 301 of the Trade Act of 1974, and

(ii) any negotiation or consultation with any foreign government;

(D) if action referred to in subparagraph (C) was not taken, an explanation of the reasons therefor; and

(E) recommendations to the Congress of any additional legislative authority or other action which the President believes is necessary and appropriate to obtain the elimination or reduction of foreign tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(2) The reports required under paragraph (1) shall be developed and coordinated by the Trade Representative through the interagency trade organization established by section 242(a) of the Trade Expansion Act of 1962.

(c) PRESIDENTIAL ACTION.—If the President, after taking into account information and advice received under subsections (a) and (b), section 6, or from other sources, has reason to believe that any act, policy, or practice of a major wine trading country constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine and—

(1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or

(2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President, if he determines that action by the United States is appropriate, shall take all appropriate and feasible action under section 301 of the Trade Act of 1974 to enforce the rights of the United States under any such trade agreement or to obtain the elimination of such act, policy, or practice.

## SEC. 6. REQUIRED CONSULTATIONS.

The Trade Representative shall consult with the Committees and with representatives of the wine and grape products industries in the United States—

(1) before identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries under section 4;

(2) in developing the reports required under section 5(b); and

(3) for purposes of determining whether action by the President is appropriate under section 301(c) or any other provision of chapter 1 of title III of the Trade Act of 1974 with respect to any act, policy, or practice referred to in section 5(b)(1).

## SEC. 7. UNITED STATES WINE EXPORT PROMOTION.

In order to develop, maintain, and expand foreign markets for United States wine, the President is encouraged to—

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1982 to make available sufficient funds to initiate, in cooperation with nongovernmental trade associations representative of United States wineries, a export promotion program for United States wine; and

(2) request, for each subsequent fiscal year, an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agricultural commodities.

## SEC. 8. AMENDMENT TO THE TARIFF ACT OF 1930.

(a) AMENDMENT.—Section 771 of the Tariff Act of 1930 (19 U.S.C. 1671) is amended by inserting before the period at the end of paragraph (4)(A) the following: "; except that in the case of wine and grape products subject to investigation under this title, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material

injury, or threat of material injury, as a result of imports of such wine and grape products".

(b) REFILING OF PETITIONS.—No provision of title VII of the Tariff Act of 1930 shall be interpreted to prevent the refiling of a petition under section 702 or 732 of that title that was filed before the date of the enactment of this Act, if the purpose of such refiling is to avail the petitioner of the amendment made by subsection (a).

Amend the title so as to read:

A bill to expand markets for United States wine through the harmonization, reduction, or elimination of barriers to international trade in such wine, to promote exports of United States wine to foreign markets, and for other purposes.

## BACKGROUND AND PURPOSE

The basic purpose of the "Wine Equity and Export Expansion Act of 1984" is to strengthen the international competitiveness of the growing U.S. wine industry and to improve economic conditions of domestic grape growers by expanding opportunities for the export of U.S. wines through more equitable conditions of trade and product promotion. H.R. 3795, as amended and ordered reported by the Committee on Ways and Means in the form of a substitute, focuses attention on the inequity that exists in international competitive conditions affecting trade in wine and the need to take action regarding barriers to U.S. wine exports. The bill as amended also encourages export promotion of U.S. wine and amends the countervailing duty and antidumping laws to enable grape growers to seek relief if they allege material injury as a result of subsidized or dumped imports of wine and grapes products.

### U.S. WINE PRODUCTION AND TRADE

The U.S. grape and wine industry has grown substantially in recent years. One firm, S.&J. Gallo, in Modesto, California is believed to account for over one-third of total domestic wine production. The top five firms account for about 70 percent of total domestic production. The number of bonded wine cellars has increased steadily from 1978 to 1982 from 769 to 1,084, with 55 percent of the cellars, accounting for about 90 percent of total domestic production, located in California. Other major wine-producing states are New York (7 percent of total cellars), Ohio and Oregon (each 4 percent) and Pennsylvania (3 percent). About 10,000 workers are employed in wineries, 20,000 in vineyards, and about 80,000 in wholesale, retail, distribution, and other related industries.

Domestic wine consumption increased about 18 percent from 1979 to 527 million gallons in 1983 while domestic production varied irregularly in quantity. Domestic production increased in 1980, decreased in 1981, increased in 1982, and fell again in 1983 to 425 million gallons, or 4 million gallons less than in 1979.

Historically, there has been a substantial imbalance in U.S. wine trade, amounting to a deficit of $822 million in 1983. U.S. wine exports increased steadily from 1979 to a high of 10.6 million gallons in 1981, then declined to 7.6 million gallons by 1983. Only about 2 percent of total domestic production by volume is exported annually. Canada is the principal market (about 47 percent of total export volume), followed by the United Kingdom (15 percent), and Japan (5 percent).

Imports have increased steadily by about 40 percent since 1979 to 131 million gallons valued at $855 million in 1983. Italy is the major supplier (nearly 55 percent of total volume), followed by France (19 percent), and West Germany (12 percent). Imports as a percent of total consumption have increased steadily from 21 to 25 percent during the 1979–1983 period. According to the domestic industry, imports have accounted for one-third of U.S. market growth in the past decade, with Italian wines accounting for 85 percent of the import growth.

In the late 1970s, as U.S. consumers became more wine conscious, supply fell short of demand for both California and foreign wines. Grape growers increased their acreage—by 56 percent in California alone over the past decade—and investors financed new wineries in many states as well as doubling the number in California. At the same time as domestic grape acreage increased and record harvests occurred in 1981 and 1982, most of Europe has had abnormally large harvests during the past several years. The strong U.S. dollar and, according to U.S. industry sources, various subsidy programs, give European wines a strong advantage in the U.S. market. The growth in domestic wine consumption fell to only 1.3 percent in 1982 as a result of the recession, the lowest annual increase since 1974. These various factors contributed to an increase in inventory of wine to 710 million gallons—in 1982 a level far exceeding one year's domestic production—and a sharp decline in grape grower prices by at least 25 percent.

As of December, 1983, however, the domestic inventory surplus had declined to 666 million gallons, grape prices had risen, and consumption had increased somewhat to 527 million gallons.

### U.S. AND FOREIGN BARRIERS ON WINE IMPORTS

The United States has the lowest tariff on wine imports of any major wine-producing country. Most wine imports (77 percent) enter the United States under item 167.30 of the Tariff Schedules of the United States (TSUS) subject to a MFN duty of 37.5 cents per gallon, equivalent to 6.8 percent ad valorem. In addition, Federal excise taxes of 17 cents per gallon apply to such wine containing not more than 14 percent alcohol. Most states and some municipalities also impose excise, sales, and other taxes and other restrictions applicable to domestic as well as foreign wines brought into their jurisdictions.

A Certificate of Label Approval must be presented to the U.S. Customs Service to effect release of shipments from customs custody and composition must meet certain requirements of Bureau of Alcohol, Tobacco and Firearms and Food and Drug Administration regulations.

Foreign barriers of both developed and developing countries on wine imports are generally significantly more restrictive than U.S. duties and taxes and include a variety of nontariff barriers. Section 854(a) of the Trade Agreements Act of 1979 required a review by the President of foreign tariff and nontariff barriers affecting U.S. exports of alcoholic beverages, including wine, and submission of a report to the Congress on the results of the review by January 1, 1982. The inventory of trade barriers contained in that report indicates that these barriers take a variety of forms, such as import prohibitions or quotas: certifications, bottling and labelling requirements: minimum

import price and markup practices; and discriminatory practices of liquor control boards. Some of these measures have been in place for many years and represent significant barriers for U.S. wine exporters.

More recently, the United States has made some progress in obtaining the reduction or removal of some trade barriers to U.S. wine exports. In July, 1983 the United States and the European Communities (EC) reached agreement outlined in an exchange of letters concerning various wine-making and labelling practices. The EC implemented regulatory changes under hte accord effective on July 6, 1984. In addition, the EC announced on March 16, 1984 that it would reduce to zero compensatory charges levied on imports of U.S. bottled wine as part of its reference price system.

As part of its latest trade liberalization package, Japan agreed to reduce its duties on four wine categories as of April 1, 1985 by about 31 percent on the average liter of U.S. wine.

### COUNTERVAILING AND ANTIDUMPING DUTY CASES

On January 27, 1984, the American Grape Growers Alliance for Fair Trade filed petitions under the countervailing duty and antidumping laws alleging that subsidized and dumped imports of certain table wine from Italy and France were causing annual losses of up to $600 million to U.S. grape growers. However, in its determination in March, 1984, the International Trade Commission (ITC) defined the domestic industry as including only producers of wine, and found no reasonable indication that the industry was materially injured or threatened with material injury by reason of such imports.

## SUMMARY OF H.R. 3795 AS AMENDED

### SECTION 1. SHORT TITLE

"Wine Equity and Export Expansion Act of 1984".

### SECTION 2. CONGRESSIONAL FINDINGS AND PURPOSES

Section 2 lists various findings concerning economic factors affecting the competitiveness of the U.S. wine and grape product industries, including restrictive foreign barriers to U.S. wine exports. The purposes of the bill are to expand wine consumer choice, to encourage wine export promotion, and to achieve greater foreign market access for U.S. wine.

### SECTION 3. DEFINITIONS

Section 3 includes definitions of various terms used in the Act.

### SECTION 4. DESIGNATION OF MAJOR WINE TRADING COUNTRIES

Section 4 requires the U.S. Trade Representatives (USTR) to designate major wine trading countries, which are significant potential markets for U.S. wine and maintain tariff and nontariff barriers to (or other distortions of) U.S. wine trade.

SECTION 5. ACTIONS TO REDUCE OR ELIMINATE TARIFF AND NONTARIFF BARRIERS AFFECTING U.S. WINE

Section 5 requires the following actions by the President:

The President must direct the USTR to consult with each country to seek reduction or elimination of its barriers to or other distortions of trade in U.S. wine.

The President must submit a report to the House Committee on Ways and Means and the Senate Committee on Finance within 13 months after date of enactment on each country concerning efforts to expand wine exports during the previous year and since his 1982 report to Congress on wine trade barriers. Each report would include:

a description of each trade barrier, including its operation and legal basis;

an assessment of the extent each barrier is subject to a trade agreement;

action taken or proposed under existing authority to eliminate or reduce the barrier, such as action under section 301 of the Trade Act of 1974 and negotiations or consultations;

reasons for not taking such action;

recommendations to Congress on any additional authority or action necessary and appropriate.

If the President has reason to believe a barrier to, or other distortion of, trade in U.S. wine is a violation of or inconsistent with a trade agreement or is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce, he must take action under section 301, if he determines such action is appropriate.

SECTION 6. REQUIRED CONSULTATIONS

Section 6 requires the USTR to consult with representatives of the wine and grape products industries and with the House Committee on Ways and Means and the Senate Committee on Finance on identifying countries and trade barriers, on preparing the report, and on whether section 301 action is appropriate.

SECTION 7. U.S. WINE EXPORT PROMOTION

Section 7 encourages the President to use fiscal year 1985 funds under section 135 of the Omnibus Budget Reconciliation Act of 1982 to initiate a wine export promotion program in cooperation with winery representatives, and to request an appropriation each following year for the program which is not at the expense of requests for promotion of other agricultural commodities.

SECTION 8. AMENDMENT TO THE TARIFF ACT OF 1930

Section 8 amends section 771 of the Tariff Act of 1930 to provide that the domestic industry for purposes of countervailing duty or antidumping investigations on wine and grape products, shall include producers of the principal raw agricultural product, if they allege material injury or threat thereof, as well as the producers of wine and grape products.

## Committee Action

The Subcommittee on Trade held hearings on H.R. 3795 on November 15, 1983 and on a substitute proposal on July 24, 1984. Members of Congress, the Wine Institute, the American Grape Growers Alliance for Fair Trade, and the AFL–CIO testified in favor of the substitute proposal. The Administration, the National Association of Beverage Importers, representatives of certain U.S. wine producers, and the Consumers for World Trade testified in opposition.

In markup session on September 13, 1984, the Subcommittee on Trade ordered H.R. 3795 favorably reported to the full Committee on Ways and Means by a voice vote with amendments consisting of a further substitute based upon discussions between Members of Congress, including Members of the Committee on Ways and Means, the Wine Institute, and representatives of U.S. grape growers.

On September 25, 1984, the Committee on Ways and Means ordered H.R. 3795 favorably reported to the House by voice vote with amendments.

## Section-by-Section Analysis, Justification, and Comparison With Present Law

H.R. 3795, as amended and ordered reported by the Committee on Ways and Means in the form of a substitute contains eight sections, as follows:

### SECTION 1. SHORT TITLE

The short title for citing this Act is the "Wine Equity and Export Expansion Act of 1984"

### SECTION 2. CONGRESSIONAL FINDINGS AND PURPOSES

Section 2(a) contains several findings by the Congress relating to conditions of competition in international trade and their impact on wine and grape products. Specifically, the Congress finds that—

(1) there is a substantial imbalance in international wine trade resulting, in part, from the relative accessibility of the U.S. market to foreign wines while the U.S. wine industry faces restrictive tariff and nontariff barriers in virtually every existing or potential market;

(2) the restricted access to foreign markets and continued low prices for U.S. wine and grape products adversely affect the economic position of U.S. wine producers and grape growers and other domestic sectors that depend upon wine production;

(3) the international competitive position of U.S. wine has been weakened by foreign trade practices, high domestic interest rates, and unfavorable foreign exchange rates;

(4) wine consumption per capita is very low in many major non-wine producing markets and the demand potential for U.S. wine is significant; and

(5) the U.S. winemaking industry has the capacity and ability to export substantial volumes of wine and an increase in U.S. wine exports would create new jobs, improve the U.S. balance of trade, and otherwise strengthen the national economy.

Subsection (b) describes the purposes of the Act as (1) to provide wine consumers the greatest possible choice of wine from wine-producing countries; (2) to encourage the initiation of an export promotion program to develop, maintain, and expand foreign markets for U.S. wine; and (3) to achieve greater foreign market access for U.S. wine through the reduction or elimination of tariff barriers and nontariff barriers to (or other distortions of) trade in wine.

SECTION 3. DEFINITIONS

Section 3 defines various terms used in the Act. The term "grape product" means grape and any product (other than wine) made from grapes, including but not limited to, raisins and grape juice, whether or not concentrated.

The term "wine" means any fermented alcoholic beverage that is made from grapes or other fruit; contains between 0.5 percent and 24 percent alcohol by volume, including all dilutions and mixtures thereof by whatever process produced; and is for nonindustrial use. This definition of the term "wine" is a condensation of the wine definition contained in section 17(a) of the Federal Alcohol Administration (FAA) Act, except that the lower limit of 0.5 percent alcohol content used for Internal Revenue tax purposes was substituted for the 7 percent lower limit used by the FAA. The 0.5 percent limit is used in order to cover certain low alcohol wine products commonly referred to as "wine coolers."

The term "nontariff barriers to (or other distortion of)" in the context of trade in U.S. wine includes any measure implemented by the government of a major wine trading country that either gives a competitive advantage to the wine industry of that country or restricts the importation of U.S. wine into that country. The term "distortion" in this definition would include a subsidy.

SECTION 4. DESIGNATION OF MAJOR WINE TRADING COUNTRIES

Section 4(a) requires the U.S. Trade Representative (USTR) to designate as a major wine trading country each foreign country, or group of foreign countries represented as an economic union, that in the USTR's judgment, following the consultations required under section 6, (1) is a potential significant market for United States wine; and (2) maintains tariff barriers or nontariff barriers to (or other distortions of) trade in U.S. wine. In deciding whether a country or group of countries maintains such trade barriers, subsection (b) requires the USTR to take into account (1) the review and report to Congress under section 854(a) of the Trade Agreement Act of 1979; (2) relevant actions that may have been taken by that country or group since that review; and (3) information that may be submitted by representatives of the U.S. wine and grape products industries and other sources.

The report submitted to Congress in 1982 under section 854(a) of the Trade Agreements Act of 1979 contained a comprehensive inventory of trade barriers maintained by individual countries on wine, beer, or other alcoholic beverages. The purpose and intent in designating countries and trade barriers under section 4 is to focus, for

purposes of the actions required under section 5, on those countries or groups of countries which are a potential significant market for U.S. wine and on those tariff and nontariff barriers or other trade distorting measures which actually have a restrictive impact on access to that potential market. The Committee does not expect resources to be expended under section 5 on actions with respect to trade barriers or countries which, in its judgment and based on consultations and best available information, will not produce meaningful results in terms of opening up opportunities to realize a potential significant market for exports of U.S. wine.

The Committee also intends that meaningful actions by countries to reduce or eliminate their trade barriers affecting U.S. wine exports since the 1982 report to Congress will be taken into account. In this connection the Committee notes testimony on July 24, 1984 by representatives of the Wine Institute that section 5 would not apply to the European Communities (EC) if its regulatory changes in July on wine-making practices to implement the bilateral accord concluded in an exchange of letters with the United States in July 1983 and the reduction in March of the compensatory charges to zero under its reference price system remain in effect and are not revoked, and it does not impose new trade barriers on U.S. wine.

### SECTION 5. ACTIONS TO REDUCE OR ELIMINATE TARIFF AND NONTARIFF BARRIERS AFFECTING UNITED STATES WINE

Section 5 contains various provisions requiring actions by the President and the USTR to seek the reduction or elimination of trade barriers maintained by countries designated under section 4 to U.S. wine exports.

Subsection (a) requires the President to direct the USTR to enter into consultations with each major wine trading country to seek a reduction or elimination of that country's tariff barriers and nontariff barriers to (or other distortions of) trade in U.S. wine.

Subsection (b) requires the President to notify the Committee on Ways and Means of the House and the Committee on Finance of the Senate regarding the extent and effect of efforts undertaken since submission of the section 854(a) report to Congress and during the 12-month period since the enactment of this Act to expand export opportunities for U.S. wine in each country designated under section 4. The notification would take the form of a separate written report on each country, to be submitted to the Committees within 30 days after the close of the 12-month period. As provided in paragraph (2) of subsection (b), USTR would develop and coordinate the reports through the interagency trade organization established by section 242(a) of the Trade Expansion Act of 1962.

The report for each country would include the following five elements:

1. A description of each act, policy, and practice in that country that constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in U.S. wine. The description would be based upon an updating of the section 854(a) report and would include the legal basis and operation of the particular act, policy, or practice.

2. An assessment of the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party.

3. Information with respect to any actions taken or proposed to be taken under existing authority to eliminate or reduce each such act, policy, or practice. Such action could include, but is not limited to, any action under section 301 of the Trade Act of 1974, and negotiations or consultations with any foreign government, including under section 102 of the 1974 Act.

Action taken under section 301(b) could include, for example, a review of the practice of certifying for import, wines produced by enological practices inconsistent with United States requirements but which are legal in the country of origin; provided that if the country of origin certifies for import enological practices of United States wines legal in the United States, then the President may not terminate the practice of the Department of the Treasury of making such certifications (i.e., national treatment).

It is also intended that in exercising the authority granted to the President to obtain increased access to the markets of a trading partner under any provision of United States law, under any existing agreement to which the United States is a party, or in exercising his authority to suspend, modify, or withdraw concessions pursuant to section 125 of the 1974 Act or any other provision of United States law (e.g., compensation or retaliation in response to foreign country withdrawal, suspension, or modification of trade agreement obligations) that the President give due and full consideration to gaining access for wine to those markets or failing to gain such access, to raising tariff levels on wine imported into the United States.

4. An explanation of the reasons if action is not taken. In this connection, the Committee recognizes that the fact the President does not have authority under present law to enter into trade agreements providing for modifications in U.S. rates of duty may limit his success in obtaining the reduction or elimination of foreign tariff or other barrers to U.S. wine exports through negotiations or consultations. However, even in the absence of tariff authority, U.S. negotiators have been able to achieve in recent months a significant reduction in the Japanese tariff on wine imports as part of a broader package of trade liberalizing measures by Japan, and to obtain a bilateral wine accord with the EC that constitutes a significant reduction in nontariff trade barriers restricting access to the European wine market. Consequently, reference solely to the absence of existing tariff agreement and proclamation authority would not constitute a sufficient explanation of the reasons for not taking action to reduce or eliminate foreign trade barriers restricting market access for U.S. wine exports.

5. Recommendations to the Congress of any additional legislative authority or other action which the President believes is necessary and appropriate to obtain the elimination or reduction of foreign tariff barriers to (or other distortions of) trade in U.S. wine.

Subsection (3) provides that if the President has reason to believe that any act, policy, or practice of a major wine trading country is a tariff barrier or nontariff barrier to (or other distortion of) trade in U.S. wine and (1) is inconsistent with the provisions of or otherwise

denies benefits to the United States under any trade agreement, or (2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce, and if he determines that action by the United States is appropriate, he shall take all appropriate and feasible action under section 301 to enforce U.S. rights under the trade agreement or to obtain the elimination of the act, policy, or practice. The President would take into account information and advice received in connection with the report under section 5 and from consultations with the Committees and representatives of the wine and grape products industries under section 6 in making these determinations.

Section 301 of the Trade Act of 1974, as amended by Title IX of the Trade Agreements Act of 1979, provides the basic broad authority for the President to enforce U.S. rights under trade agreements and to respond to or other acts, policies, or practices not covered by trade agreements which are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. Section 301 authority is the counterpart under U.S. law for the dispute settlement provisions under the General Agreement on Tariffs and Trade (GATT) for practices covered by its rules, as well as independent domestic authority for the President to take appropriate action to protect U.S. trade interests in response to any foreign unfair trade practices meeting the criteria of section 301(a). Normally, section 301 action is initiated through an investigation by the USTR upon the filing of a petition alleging that a particular foreign act, policy, or practice violates or is otherwise inconsistent with trade agreement obligations, or is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce. In addition, section 301(c) authorizes Presidential action in the absence of a petition when he determines it to be warranted.

Under Section 301(a), "if the President determines action is appropriate" to enforce U.S. rights under a trade agreement or to respond to any act, policy, or practice that is inconsistent with a trade agreement or is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce, he "shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice." In addition to such action, under section 301(b) the President "may" (1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions, and (2) impose duties or other import restrictions on the products of, and fees or restrictions on the services of, the country for such time as he deems appropriate.

Section 5(c) of H.R. 3795 as amended is consistent with these existing Presidential authorities under section 301. The purpose of the provision is to emphasize that section 301 authority was intended for the purpose and should be used if the President finds that any barrier to (or other distortion of) U.S. trade in wine does in fact meet the criteria of an unfair act, policy, or practice within the meaning of section 301(a), and he determines that action under such authority is appropriate. The subsection would also apply with respect to any act, policy, or practice that might remain subsequent to submission of the report under subsection (b).

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SECTION 6. REQUIRED CONSULTATIONS

Section 6 requires the USTR to consult with the Committee on Ways and Means of the House and the Committee on Finance of the Senate and with representatives of the U.S. wine and grape products industries (1) before identifying barriers to (or other distortions of) trade in U.S. wine and designating major wine trading countries under section 4; (2) in developing the report under section 5(b); and (3) for purposes of determining whether action by the President is appropriate under section 301(c) or any other provision of Chapter 1 of Title III of the Trade Act of 1974 with respect to any act, policy, or practice referred to in the report under section 5(b).

The main purpose of these consultations is to provide guidance and information to the USTR as to the scope and coverage of countries and trade barriers or distortions to be designated under section 4, as well as advice with respect to whether particular section 301 provisions are an appropriate course of action by the President with respect to any particular trade barrier.

SECTION 7. UNITED STATES WINE EXPORT PROMOTION

Section 7 encourages the President (1) to utilize the authority under section 135 of the Omnibus Budget Reconciliation Act of 1982 to make available sufficient funds for fiscal year 1985 to initiate, in cooperation with non-governmental trade associations representative of U.S. wineries, an export promotion program for U.S. wine; and (2) to request for each subsequent fiscal year an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agricultural commodities. The purpose of this provision is to develop, maintain, and expand exports of U.S. wine.

Section 135 of the Omnibus Budget Reconciliation Act of 1982 requires the Secretary of Agriculture to use not less than $175 million or more than $190 million in each of fiscal years 1983, 1984, and 1985 of funds of the Commodity Credit Corporation (CCC) for export activities authorized to be carried out by the Secretary or by the CCC, in addition to any authorities under other provisions of law.

Under the Foreign Agricultural Service (FAS) Export Incentive Program for wine, approximately $200,000 in FAS funds were available to wineries for export promotion in 1979 and 1980. Subsequently, expenditures and funding levels declined, primarily because some wineries dropped out of the program and the dollar strengthened and exports declined.

The Wine Institute, a trade association of the California wine industry, has recently filed formal application to become a part of the FAS cooperator program for the purpose of increasing exports of California wines. Funding levels for this program would be established in consultation with the cooperators based on an annual plan of proposed promotion activities and a cost/benefit analysis of the export promotion activities.

The Committee believes that export promotion activities are an essential part of the actions authorized under the bill to expand export opportunities for U.S. wine. Marketing and sales promotion efforts, in addition to efforts to obtain the reduction or elimination of restrictive foreign trade barriers, will be necessary to develop, maintain, and expand exports of U.S. wine. The domestic wine industry itself, as well as the U.S. Government should provide resources for this purpose and any such activities utilizing U.S. Government funds should be on a cooperative basis making use of a plan that ensures meaningful results in terms of increased exports. Consequently, section 7 encourages the use of existing appropriations to initiate an export promotion program for wine. At the same time, the appropriations requested in future years for export promotion of wine should not be at the expense of such activities with respect to other agricultural commodities.

This provision was developed in consultation with the House Committee on Agriculture and the Committee on Foreign Affairs which have sole jurisdiction over the export promotion program under the Rules of the House.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
*Washington, DC, September 18, 1984.*

Hon. DAN ROSTENKOWSKI,
*Chairman, House Ways and Means Committee, Longworth Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing concerning certain provisions of H.R. 3795, the Wine Equity Act of 1984.

Section 7 of H.R. 3795, as ordered reported by your Committee, would encourage the President to (1) utilize the authority under section 135 of the Omnibus Budget Reconciliation Act of 1982 to make available sufficient funds for fiscal year 1985 to initiate, in cooperation with nongovernmental trade associations representing wineries in the United States, an export promotion program for wine made in the United States; and (2) request for each subsequent fiscal year an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agricultural commodities. These provisions were developed in consultation with the Committee on Agriculture and the Committee on Foreign Affairs, which have exclusive jurisdiction over the matters addressed by section 7 under the Rules of the House.

In order to facilitate expeditious action on H.R. 3795 by the House in the remaining days of this session, I will not seek sequential referral of the bill. This does not, however, in any respect waive the jurisdiction of the Committee on Agriculture over the subject matter within its jurisdiction that appears in this bill or any similar legislation. Should the bill go to conference with the Senate, I would request that the Speaker appoint representatives of this Committee as conferees.

I appreciate your cooperation in consulting with our Committee in the development of the provisions to which I refer, and I would request that you include this letter in your report on H.R. 3795.

With best wishes,

Sincerely,

E (KIKA) DE LA GARZA,
*Chairman.*

COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
*Washington, DC, September 18, 1984.*

Hon. E (KIKA) DE LA GARZA,
*Chairman, Committee on Agriculture, Longworth House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am pleased to receive your letter of this date relating to certain provisions of H.R. 3795, the Wine Equity Act, being considered by the Committee on Ways and Means. I recognize the jurisdictional interest of the Committee on Agriculture, as well as the Committee on Foreign Affairs, in the matters addresed by section 7 of the bill as reported by our Trade Subcommittee.

I appreciate your cooperation, not only in the development of the provisions of that section, but in agreeing not to seek sequential referral of the bill in order to expedite its consideration by the House.

I will be pleased to include copies of this exchange of correspondence in the report of our Committee on H.R. 3795.

Sincerely yours,

DAN ROSTENKOWSKI,
*Chairman.*

SECTION 8. AMENDMENT TO THE TARIFF ACT OF 1930

Section 8 makes a significant change to Title VII of the Tariff Act of 1930 (19 USC 1671). Title VII sets forth terms and procedures for imposition of antidumping and countervailing duties. Subsection (a) changes for cases involving imports of wine and grape products the definition, and therefore the scope, of the domestic industry to be analyzed by the International Trade Commission in determining material injury or threat of material injury. This change applies only to cases involving such products.

The amendment changes present law and practice by requiring the ITC to include within the scope of the domestic industry producers of the principal raw agricultural product, namely grapes, as well as producers of the processed article, namely wine and grape products, so that analysis of injury or threat of injury will include the impact on the former group. This provision only applies if grape growers allege injury.

Under present law, the term "industry" for purposes of Title VII investigations means the domestic producers of a "like product", and the term "like products" has been defined and interpreted to include

only those products which are identical or most similar in their characteristic to the imported article. Accordingly, producers of products being incorporated into a processed or manufactured article (i.e., intermediate goods or component parts) are generally not included in the scope of the domestic industry that the ITC analyzes for the purposes of determining injury. There have been cases where the ITC has included producers of raw agricultural articles within the scope of the domestic industry producing a processed article, but only where there are very limited secondary uses for the raw product and where there is such a commonality of economic interest and ownership between growers and processors that they are virtually indistinguishable in economic terms.

However, in its March 1984 determination concerning wine from France and Italy, the Commission ruled that grape growers were not part of the U.S. wine industry. The Committee believes that this decision was incorrect. In view of the substantial relationship between grape growers and the wine industry, the Committee believes they should be included within the domestic industry for the purpose of any future countervailing duty or antidumping investigation involving these products.

Subsection (b) makes it clear that petitioners who were rejected by the ITC ruling prior to this amendment may refile their petition if the purpose of the refiling is to avail themselves of the amendment. Consequently, grape growers may refile their petition and have it reheard by the appropriate agencies.

## Vote of the Committee in Reporting the Bill

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 3795 was ordered favorably reported by the Committee on Ways and Means to the House by a voice vote with amendments.

## Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee concludes, on the basis of hearing testimony, discussions among Members, and review of the international trade situation in wine and grape products, that additional actions by the President are warranted to increase and promote foreign market access for U.S. wine exports.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

## Budgetary Authority and Cost Estimates, Including Estimates of the Congressional Budget Office

In compliance with clause 7(a) of rule XIII and with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 3795, as amended, does not provide new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rule XIII and with clauses (2)(1)(3)(B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 3795, as amended, and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 26, 1984.*

HON. DAN ROSTENKOWSKI,
*Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined H.R. 3795, the Wine Equity Act of 1984, as approved by the Committee on Ways and Means.

The bill would promote U.S. wine exports by directing the President and the United States Trade Representative to consult with other countries to reduce foreign tariff and non-tariff barriers to trade of U.S. wine and to initiate a wine export promotion program.

It is impossible to estimate any potential revenue effect of the bill, given the discretionary nature of its provisions. The bill would not affect current levels of budget outlays or tax expenditures.

With best wishes.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

## INFLATIONARY IMPACT STATEMENT

With respect to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 3795 as amended would not have an inflationary impact on prices and costs in the operation of the general economy.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## SECTION 771 OF THE TARIFF ACT OF 1930

**SEC. 771. DEFINITIONS; SPECIAL RULES.**

For purposes of this title—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) COUNTRY.—The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a

foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4 INDUSTRY.—

(A) IN GENERAL.—The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product*; except that in the case of wine and grape products subject to investigation under this title, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.*

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98TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
98-1092

# UNITED STATES-ISRAEL FREE TRADE AREA

SEPTEMBER 27, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

## REPORT

[To accompany H.R. 5377]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5377) authorizing the President to enter into, and to proclaim modifications necessary to implement, a trade agreement with Israel providing for duty-free treatment for, and the elimination of import restrictions on, the products of Israel, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

### BACKGROUND AND PURPOSE

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations originally proposed by the Israeli Government in 1981 with a view to concluding a U.S.-Israel free trade area to eliminate tariffs and other trade distorting practices between the two countries. Since 1981, the U.S. Government has reviewed the economic and political merits of the proposal and determined the United States could gain substantially from a free trade area with Israel. The Office of the U.S. Trade Representative has been heading the negotiations for the United States since they began in mid-January 1984.

Unlike the Caribbean Basin Initiative (CBI) authorized by the Congress in 1983 under the Caribbean Basin Economic Recovery Act (P.L. 98-67), the U.S.-Israel arrangement would be a two-way free trade area. Article XXIV of the General Agreement on Tariffs



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and Trade (GATT) permits free trade areas or customs unions as a deviation from the nondiscrimination, most-favored-nation (MFN) principle of Article I if the agreement meets certain criteria. GATT-approved free trade areas (1) must eliminate duties and other restrictive measures on "substantially all" trade between the parties; and (2) duties and other regulations of commerce maintained by the parties may not be higher or more restrictive to the trade of third countries than the parties had in place prior to the agreement. An "interim agreement" can qualify under Article XIV if it contains a plan and schedule for formation of the free trade area "within a reasonable length of time." Waivers may be sought under GATT provisions for free trade area proposals which do not meet the requirements.

A free trade area with Israel wold be the first such arrangement entered into by the United States with any country aside from the bilateral free trade arrangement with Canada in the atuomotive sector only. At the present time the President does not have authority to enter into or to proclaim duty-free treatment under a free trade area arrangement with Israel or any other country.

*EC-Israel free trade area*

In 1975 the European Communities (EC) and Israel established a bilateral free trade area on industrial products. EC imports of most industrial goods were granted duty-free treatment after July 1, 1977, with full concessions on certain sensitive items (refined petroleum products, textiles, and certain chemicals) delayed until December 31, 1979. Israel's concessions to the EC were staged over a much longer period of time. Israel eliminated tariffs on about 60 percent of its industrial imports from the EC between 1975 and 1980. Israel is due to complete staging of duty-free treatment for the remaining more sensitive products by no later than 1989.

Coverage of agricultural products under the free trade area is much more limited. The EC offered preferential tariff treatment on 80 percent of its agricultural imports from Israel, including citrus products, but the Common Agricultural Policy remains in effect (especially the imposition of a reference price for certain fruits and vegetables). Israel's agricultural tariff concessions to the EC were minimal, consisting of reductions of 15 to 25 percent on only about one percent of total EC agricultural exports to Israel. Under the agreement, Israel must also eliminate all quantitative restrictions on imports from the EC by 1984.

*Current U.S./Israel tariff treatment under GSP*

Israel is a beneficiary of duty-free treatment on eligible imports under the U.S. Generalized System of Preferences (GSP) as a result of a bilateral Understanding entered into with the United States in October 1975. Section 502(b)(3) of the Trade Act of 1974 authorizing GSP requires that GSP beneficiaries eliminate any "reverse" preferential treatment whch they grant to developed countries "with a significant adverse effect on U.S. commerce."

In order to obtain GSP eligibility in view of its preferences to the EC under the free trade area, Israel agreed in a bilateral GSP Understanding to lower its MFN duties on 132 items of export interest to the United States on an unbound basis to the EC preferential

rate level if specified criteria were met (imports of the product from the United States exceed a certain share of the Israeli market, a percent annual growth rate, and an absolute value) or "if U.S. trade in such items would otherwise be adversely affected in significant measure." Duties were reduced on these items from an average level of 24 percent in 1975 to 10.5 percent in 1981, and will be reduced further to about 6.4 percent in 1985 as opposed to an average MFN level of 10.5 percent.

Israel is the seventh largest annual beneficiary of the U.S. GSP program, receiving 4.4 percent of total GSP benefits. GSP duty-free imports totalled $474 million or 38 percent of total U.S. imports from Israel in 1983 of $1,250 million. Israeli preferential treatment of U.S. exports under the GSP understanding would terminate if Israel's benefits under the GSP program expire.

*U.S.-Israel trade*

The United States is Israel's major trading partner, providing a market for about 25 percent of Israel's total exports and supplying about 20 percent of its total non-military imports. The United States has enjoyed a trade surplus historically and consistently with Israel despite the fact that a substantially larger proportion of U.S. exports to Israel are subject to tariff protection than Israel exports to the United States. In 1983, the U.S. trade surplus was about $400 million, excluding military goods.

Israel currently imports from all sources about $8 billion worth of goods and $6 billion worth of services, excluding imports for military use. U.S. total non-military exports to Israel in 1982 were about $1.5 billion and about $1.7 billion in 1983. Based on 1982 data, about 60 percent of total U.S. exports to Israel currently enter duty-free, including 22 percent on an MFN bound basis. Israeli Government purchases of agricultural products duty-free totaled about $300 million in 1983. Over 40 percent of total U.S. non-military exports to Israel are currently dutiable at an average duty exceeding 10 percent. The major U.S. dutiable exports to Israel are motor vehicles, electrical goods and apparatus, kraftliner, synthetic yarns, automatic data processing machines, fasteners, medical apparatus, and controlling instruments.

After the full implementation of the EC-Israel free trade area in 1989, U.S. dutiable exports will face an average tariff disadvantage of about 10.5 percent in relation to European exports to Israel entering duty-free. Already U.S. products are facing an increasing disadvantage in the Israeli market as the EC-Israel free trade area is completed. The EC will also gain a margin of preference on the products covered by the GSP Understanding. The economic advantage to the United States of a free trade area would be elimination of tariff barriers on nearly one-half of U.S. exports to Israel and removal of the EC competitive duty-free advantage, particularly in industrial products which directly compete with the EC or are not covered by the GSP Understanding. An arrangement also offers the opportunity to open the Israeli service sector to U.S. competition and to obtain specific commitments to reduce Israeli subsidy and other nontariff practices that distort U.S. trade.

Over the past five years, U.S. imports from Israel have increased more than 70 percent from $749 million in 1979 to $1.2 billion in

1982 and $1.3 billion in 1983. Despite this growth, however, U.S. imports from Israel constitute only about 0.5 percent of total U.S. imports. About $1 billion, or 90 percent of U.S. imports from Israel currently enter duty-free either on an MFN basis (55 percent) or under GSP (35 percent). Polished diamond and civil aircraft are the main imports entering duty-free. Of the remaining 10 percent of total imports which are dutiable, about 40 percent consists of agricultural products ($49 million in 1982). Imports from Israel subject to duty tend to be high tariff items such as textiles and apparel, jewelry, citrus, handmade glassware, flowers, processed tomato products, olives, footwear, and bromine chemicals.

The main benefits of a free trade area to Israel as a small sized economy would be duty-free treatment for products not presently covered by GSP and secure, predictable duty-free treatment on items currently under GSP but subject to overall changes in status, particularly if the GSP program is not renewed beyond its statutory termination date of January 3, 1985. Israel expects a free trade area would ensure free market access to two major markets—the EC and the United States—thereby encouraging investment, industrial development, and an improved balance-of-payments position.

SUMMARY OF U.S. NONMILITARY TRADE WITH ISRAEL, 1980—JANUARY–MAY 1984

[In millions of dollars]

| | Exports | Imports | Balance |
|---|---|---|---|
| 1980 | 1,393 | 941 | +452 |
| 1981 | 1,501 | 1,235 | +266 |
| 1982 | 1,529 | 1,162 | +367 |
| 1983 | 1,715 | 1,250 | +465 |
| January–May 1983 | 648 | 1,235 | +109 |
| January–May 1984 | 792 | 941 | +25 |

SUMMARY OF TRADE WITH ISRAEL, 1982

[Dollars in millions]

| | Value | Percent of total |
|---|---|---|
| Total U.S. exports to Israel | $1,529 | 100 |
| Agricultural exports | 421 | 28 |
| Nonagricultural exports | 1,108 | 72 |
| Dutiable exports | 609 | 40 |
| Duty-free exports | 920 | 60 |
| Total U.S. imports from Israel | 1,162 | 100 |
| Agricultural imports | 49 | 4 |
| Nonagricultural imports | 1,113 | 96 |
| MFN duty-free imports | 641 | 55 |
| MFN dutiable imports | 72 | 6 |
| GSP duty-free imports | 403 | 35 |
| GSP dutiable imports[1] | 46 | 4 |

[1] GSP eligible articles that do not acutally receive duty-free treatment because imports exceed competitive need limits or do not meet rule-of-origin or other requirements.

Source: Office of the U.S. Trade Representative.

SUMMARY OF H.R. 5377, AS AMENDED

*Section 1. Short title*

"United States-Israel Free Trade Area Act"

*Section 2. Basic authority*

Section 2 authorizes the President to enter into a "reciprocal and mutually advantageous" trade agreement with the government of Israel providing for duty-free treatment and the harmonization, reduction, or elimination of nontariff barriers to (and other distortions of) trade between the United States and Israel.

The President may proclaim duty-free treatment without further Congressional approval. Any provision on nontariff measures would enter into force only if the advance Congressional consultation and notification requirements are met and implementing legislation approved under the expedited procedures of sections 102 and 151–154 of the Trade Act of 1974.

*Section 3. Rules of origin*

Section 3 requires that Israeli articles under the trade agreement meet rules-of-origin equivalent to such requirements under the Caribbean Basin Economic Recovery Act (CBI): direct importation; 35 percent minimum local content, of which a maximum of 15 percent may be U.S. content; substantial transformation; prohibition of mere "pass through" operations.

*Section 4. Import relief provisions*

Section 4 contains various provisions concerning the application of import relief actions to Israeli articles under a free trade area arrangement, including authorities for the President to suspend duty-free treatment and proclaim a duty rate on an Israeli article under the free trade area agreement as import relief or to safeguard the national security. The International Trade Commission (ITC) must state in its report to the President on any import relief investigation whether its findings apply to imports from Israel.

*Section 5. Emergency relief for imports of agricultural perishables products*

Section 5 establishes procedures equivalent to provisions under the CBI for obtaining interim emergency relief from duty-free imports of agricultural perishable products from Israel pending action under normal import relief procedures.

*Section 6. Application of other trade laws*

Section 6 ensures that existing laws for relief from import competition and unfair trade practices (e.g., countervailing duty, antidumping, and section 337 provisions of the Tariff Act of 1930; safeguarding national security under section 232 of the Trade Expansion Act of 1962; sections 201–203 and section 301 of the Trade Act of 1974) would continue to apply to Israeli articles entering under a free trade area agreement. No trade benefit to Israel authorized under this legislation can be extended to any other country, notwithstanding any other provision of law.

## COMMITTEE ACTION

The Subcommittee on Trade of the Committee on Ways and Means held three days of hearings on the proposed United States-Israel free trade area including on H.R. 5377, on May 22 and June 13 and 14, 1984. The Subcommittee received extensive testimony and statements for the record as printed in serial 98-72, as well as extensive subsequent written comments. Testimony from the Administration, Members of Congress, and the private sector and written comments from individual firms and business associations generally supported a U.S.-Israel free trade area, with Members of Congress and business associations representing specialty agricultural product and certain manufacturing interests seeking exemption of certain products or other amendments. The AFL-CIO, the American Fiber, Textile, Apparel Coalition, the Leather Products Coalition, and certain agricultural associations in California opposed the proposal.

On June 26, 1984, the Subcommittee held a conceptual markup discussion of H.R. 5377, and in markup session on September 12 ordered H.R. 5377 favorably reported to the full Committee on Ways and Means by voice vote with an amendment in the form of a substitute.

On September 26, 1984, the Committee on Ways and Means ordered H.R. 5377 favorably reported to the House by voice vote with an amendment by a roll-call vote of 33 yeas, 0 noes.

## SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

H.R. 5377, as amended and ordered reported by the Committee on Ways and Means, sets forth authorities and conditions for establishment of a free trade area between the United States and Israel.

*Section 1. Short title*

The short title for citing this Act is the "United States-Israel Free Trade Area Act."

*Section 2. Basic authority*

Section 2 of H.R. 5377 as amended provides the basic authorities for the President to establish and implement a free trade area arrangement between the United States and Israel. Subsection (a) authorizes the President, subject to sections 3, 4, 5, and 6 of the Act, to enter into a "reciprocal and mutually advantageous" trade agreement with the Government of Israel providing for:

> (1) the continuance of existing duty-free treatment of, and the elimination of existing duties on, articles that are eligible Israeli articles meeting the rule-of-origin requirements under section 3; and
>
> (2) the harmonization, reduction, or elimination of nontariff barriers to (and other distortions of) trade between the United States and Israel.

Subsection (b)(1) authorizes the President to proclaim the continuances and modifications regarding duty-free treatment of eligible Israeli articles as he determines to be necessary or appropriate to carry out the trade agreement authorized under subsection (a)(1).

Subsection (b)(2) requires that the provisions of the trade agreement pertaining to nontariff barriers and other trade distortions be treated as a trade agreement entered into under the authority of section 102 of the Trade Act of 1974. Such provisions shall enter into force with respect to the United States only if section 102 (c), (d), and (e) are complied with in regard to those provisions.

Granting authority to the President to proclaim tariff changes, while reserving implementation of changes in U.S. laws to modify other trade barriers or practices to approval by the Congress is consistent with historic practice since enactment of the Reciprocal Trade Agreements Act of 1934 (P.L. 73-316). Since 1934, the Congress periodically has empowered the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, subject to specific conditions and limitations. The most recent grant of such basic authority was contained in section 101 of the Trade Act of 1974, which served as the basis for negotiation of tariff reductions in the most recent multilateral trade negotiations (Tokyo Round) concluded in 1979. The President's basic tariff negotiating and proclamation authority expired on January 2, 1980. Section 124 of the Trade Act further provided the President, for another two years, residual authority to negotiate tariff adjustments within narrow limits and to correct discrepancies and anomalies resulting from the basic multilateral agreement. As section 124 has not been renewed since its expiration on January 2, 1982, the President currently does not have tariff proclamation authority.

Section 102 of the Trade Act of 1974 also separately directed and authorized negotiations of trade agreements to harmonize, reduce, or eliminate nontariff barriers to or other distortions of trade. Such agreements may also provide for the prohibition of, or limitations on, the imposition of such barriers or other distortions. In section 1101 of the Trade Agreements Act of 1979 the Congress renewed the trade agreement authority on nontariff barriers for eight years until January 2, 1988.

In contrast to traditional tariff proclamation authority, however, a nontariff barrier agreement negotiated under section 102 authority cannot enter into force for the United States and become binding as a matter of domestic law unless the President adheres to certain requirements for presentation to the Congress and implementing legislation approving the agreement and any changes in U.S. law is enacted into law. Sections 102 (c)-(f) and 151-154 prescribe the following expedited procedures for Congressional approval:

(1) Before entering into an agreement, the President must consult with the appropriate committees of jurisdiction over subject matters affected by the agreement, especially regarding issues of implementation.

(2) The President must notify the Congress of his intention to enter into the agreement 90 days before doing so, and thereafter promptly publish his intention in the Federal Register.

(3) After entering into the agreement, the President must submit a copy of the agreement to the Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and statement change or affect existing law,

and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate. An implementing bill must contain provisions approving the agreement and the statement of administrative action, and any amendments to current law or new authority required or appropriate to implement the agreement.

(4) The implementing bill is introducing in both Houses of Congress on the day it is submitted by the President. The bill is referred to the committee or committees of jurisdiction. The committees have 45 legislative days in which to report the bill; a committee is discharged automatically from further consideration after that period.

(5) Each House votes on the bill within 15 legislative days after the measure has been received from the committee or committees. A motion in the House to proceed to consideration of the implementing bill is privileged and not debatable. Amendments are not in order, and debate is limited to not more than 20 hours.

Although statutory, the procedures in paragraphs 3, 4, and 5 were enacted as an exercise of the rulemaking powers of each House of Congress, and are decreed to be a part of each House's rules. The procedures may be changed in the same manner as any other rules.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which generally involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance, while at the same time ensuring expeditious action on the final agreement and implementing bill. This process was used successfully in approving the Tokyo Round trade agreements and the Trade Agreements Act of 1979.

Section 2 of H.R. 5377 as amended, authorizes the President to negotiate and enter into a trade agreement providing for a free trade area with Israel. Consistent with the historic pattern, the modification of U.S. rates of duty with respect to imports from Israel would become effective according to the terms of the proclamation without further Congressional action being required; the provisions under sections 3, 4, 5, and 6 of the bill necessary to administer the tariff modifications under the trade agreement would also become effective at the same time without further Congressional approval being necessary. Any other provisions of the agreement pertaining to nontariff barriers to or other distortions of trade, or to any other substantive changes in U.S. law as they apply under the agreement, would be enacted only after Congressional approval under the procedures described above.

The basic authority granted to the President under section 2 of H.R. 5377 as amended to enter into a trade agreement with Israel is limited to an agreement which he determines to be "reciprocal

and mutually advantageous". In this connection, considerable concern has been expressed by Members of Congress and the private sector about subsidy programs and import restrictive measures maintained by Israel which could subject U.S. industries and workers to unfair import competition under a free trade area, particularly in the agricultural sector, or restrict the ability of U.S. exporters to take advantage of opportunities in the Israeli market under a free trade area.

The Committee believes it is essential to achieving mutual advantage in a free trade area under conditions of fair competition, and in the interest of the Israeli economy itself, that the Israeli government enter into a commitment with the United States to impose a standstill on the coverage and forms of its subsidy programs and agree to phase out and eliminate its existing subsidy practices. Such a commitment should be a precondition to U.S. agreement to enter into a free trade area. This commitment would also serve as a basis for Israel to join the GATT Agreement on Subsidies and Countervailing Measures and permit extension of the injury test under the U.S. countervailing duty law.

In addition, the Committee is concerned that various forms of import restrictions imposed by Israel ostensibly for balance-of-payments reasons or to protect infant industries could potentially negate the benefits of duty-free treatment for U.S. exporters. Consequently, it is essential that the agreement contain strict disciplines to ensure that balance-of-payments and infant industry related measures are temporary in nature, that relative advantages to the United States under the free trade area are maintained, and in the case of balance-of-payments measures, that the purpose is not to protect particular domestic industries. Procedures for periodic review of the operation of the agreement and settlement of possible disputes should also be provided in the arrangement.

The Committee understands that U.S. negotiators are seeking such commitments and disciplines in the agreement and strongly supports these efforts.

Considerable concern has also been expressed by Members of the Committee, other Members of Congress, and by the private sector that duty-free imports from Israel of various products currently subject to duty, paticularly cetain fresh and processed agricultural products, bromine compounds, textiles and apparel, and footwear and other leather-related products, may have an injurious impact on U.S. industries and workers. While the size of the Israeli economy and restricted land and resources limit its overall potential production and export capacity, significant increases in imports from Israel may result from duty-free treatment on particular products that could add to the difficulties already experienced by certain U.S. industries in competing with imports generally. There is also concern that a free trade area with Israel may set a precedent for negotiating similar arrangements with other countries. Representatives of these interests have requested statutory exclusions from the coverage of a free trade area with Israel.

The Committee is concerned about this problem, and expects the President to minimize any potential adverse effects on the U.S. economy through negotiation and implementation of this agreement. The Committee has received assurances from the USTR that

the agreement itself will provide special treatment of products for which available information and advice indicate that increased imports under a free trade ageement may have an adverse impact on U.S. industries and workers. Such treatment might take the form of temporary exclusion of certain particularly import-sensitive products from the arrangement and the phase-in of duty-free treatment over a period of years in order to facilitate the adjustment process. The Committee expects such judgments to be based upon the advice requested and received by the President from the International Trade Commission on the probable domestic impact of duty-free treatment on particular products, information from private sector representatives, as well as other available sources. It is the Committee's understanding that it is the intention of the USTR to provide for the phased-in treatment of duty-free treatment over a period of years on products for which the ITC believes there is a potential threat of significant adverse impact from increased Israeli imports, as well as on other products which are deemed to be import-sensitive.

After careful consideration, however, the Committee believes it is unnecessary as a result of these assurances and, in fact, would be contrary to overall U.S. trade interests to exclude specific products by statute from the President's negotiating authority. About 90 percent of total U.S. imports from Israel already enter duty-free under MFN provisions or the GSP program, whereas only about 45 percent of U.S. exports to Israel now enter duty-free. By 1989, the European Communities will enjoy the advantage of preferential duty-free access to the Israeli market on many products in which the United States would otherwise enjoy a competitive export advantage. If the United States excludes an extensive list of products from consideration for duty-free access, Israel is likely to exempt products from duty-free access to its market of significant export interest to the United States. The loss of U.S. production and jobs associated with the loss of export opportunities in Israel must be weighed against the potential impact on other domestic industries of increased Israeli import competition. Therefore, achievement of maximum reciprocal export benefits for both Israeli and the United States to make the effort of negotiating and implementing a free trade area worthwhile requires comprehensive product coverage by both countries. Furthermore, compliance with GATT Article XXIV standards requires that a free trade area cover "substantially all" trade between the parties.

It should also be recognized that a free trade area with Israel is intended to be a permanent, not temporary arrangement. Consequently, economic conditions in both Israel and the United States, including the sensitivity of particular products to import competition, will change during the course of the agreement. The listing of product exclusions in the statutory authority could become outdated as competitive conditions change, thereby resulting in a loss of reciprocal benefits under a free trade area in the future for no economic reason.

H.R. 5377, as amended, maintains the flexibility for U.S. negotiators to achieve reciprocal product coverage that in their judgment maximizes the economic advantages of a free trade area in the overall U.S. interest.

*Section 3. Rules of origin*

Section 3 of H.R. 5377 as amended stipulated that provisions of the trade agreement entered into under section 2(a)(1) of the bill apply only to Israeli articles that meet rule-of-origin requirements equivalent to such rules imposed under section 213(a) of the Caribbean Basin Economic Recovery Act (CBI) for purposes of extending duty-free treatment to products of CBI beneficiary countries. In order to be eligible for treatment, under the free trade area, an Israeli article must meet three basic rule-of-origin requirements: (1) a product wholly of Israel or "substantially transformed" in Israel into a new or different article; (2) direct importation; and (3) 35 percent minimum local content. In addition, rules equivalent to those under the CBI which specifically prohibit strictly "pass through" operations from qualifying for duty-free entry would also apply.

The first requirement would prohibit mere "pass-through" operations involving little value-added in Israel. In order to be eligible under the trade agreement, the articles must be wholly the growth, product, or manufacture of Israel, or must be a new or different article of commerce which has been grown, produced, or manufactured in Israel.

The second requirement for direct importation from Israel into the customs territory of the United States is identical to the direct importation requirement under present law for duty-free treatment of eligible artricles from Israel and other beneficiary countries under the Generalized System of Preferences.

Under the third requirement, a minimum of 35 percent of the appraised value of the imported article must consist of the cost or value of materials produced in Israel plus the direct cost of processing operations performed in Israel. This minimum level corresponds to the requirement for eligibility for duty-free treatment under GSP. There would also be as credit allowed for including a certain amount of U.S. content in Israeli articles; of the total value of the article which may consist of materials or components produced in the United States, up to 15 percent may be applied toward meeting the 35 percent minimum domestic content requirement.

The regulations that the Secretary of the Treasury must issue to implement the rules of origin with respect to Israel must also prohibit eligibility for duty-free treatment if the product to be imported merely undergoes certain minor operations, that is a simple combining or packaging operation or mere dilution with water or mere dilution with another substance which does not materially alter the article.

The object of these provisions is to prevent pass-through operations in which the work performed is of little economic benefit to Israel and constituters avoidance of U.S. duties. Examples of activities that the U.S. Customs Service should consider as insufficient include the addition of batteries to devices; simply fitting together a small number of components by bolting, glueing, soldering, etc., merely repacking or packaging together components; merely diluting with water, such as reconstituting orange juice concentrate; merely diluting chemicals with inert ingredients to bring them to standard degrees of strength; or the addition of substances such as anticaking agents, preservatives, wetting agents, etc. The provision

would not preclude meaningful assembly operations utilizing foreign components, provided the assembly is of significance to the local economy, meets the 35 percent local content rule, and results in a new and different article.

As under the CBI and GSP, the types of direct costs of processing operations performed in Israel which may be included for purposes of meeting the minimum 35 percent local content requirement would include, but are not limited to, all actual labor costs involved in producing the imported article, including on-the-job training, fringe benefits, and certain other costs; and dies, molds, tooling, and depreciation on machinery and equipment allocable to the specific merchandise. Costs which are not directly attibutable to the merchandise concerned or are not costs of manufacturing the product, such as profit and general expenses of doing business, cannot be considered direct costs of processing operations. This provision conforms to current regulatory language used in administering GSP.

Subsection (c) requires the Secretary of the Treasury to prescribe regulation to administer these rules-of-origin requirements after consultation with the USTR.

*Section 4. Import relief provisions*

As provided under section 6(a) of the bill as amended, the standard import relief criteria and procedures under section 201–203 of the Trade Act of 1974 would continue to apply to any Israeli article imported under a free trade area arrangement entered into or proclaimed under the authorities in section 2. Under the import relief procedures, a domestic industry may seek a finding from the International Trade Commission that increased imports are a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive article. The ITC must report its determination to the President within six months with a recommended remedy if the finding is affirmative. In such cases, the President has 60 days to determine whether to provide import relief in the form of tariff increases, tariff-rate quotas, quantitative restrictions, orderly marketing agreements, or a combination of these measures for up to five years, subject to a possible three-year extension.

Section 4 contains various provisions concerning the application of import relief under the Trade Act and under section 232 of the Trade Expansion Act of 1962 to Israeli articles under a free trade area arrangement. Subsection (a) authorizes the President to suspend duty-free treatment on any eligible Israeli article and proclaim a rate of duty on that article if such action is proclaimed as import relief under section 203 of the Trade Act or as a national security measure under section 232 of the Trade Expansion Act of 1962.

Subsection (b) requires the ITC, in any report to the President on an import relief investigation covering an Israeli article subject to duty-free treatment, to state whether its findings and recommendation apply to imports from Israel of that article.

The authority of the President is in no way limited by these provisions to impose any form of relief authorized under the Trade Act with respect to all imports of an article, including imports from

Israel. However, the President would have discretion to maintain duty-free treatment on imports from Israel regardless of the ITC's findings, while either denying or granting tariff or tariff-quota relief on imports of the article from other countries. Alternatively, the President would have the flexibility to maintain a margin of preference for imports from Israel by establishing an intermediate rate of duty on such imports rather than either restoring the previous MFN rate or imposing a higher rate established as tariff or tariff-rate quota relief on imports from other countries. Similar discretion and flexibility would apply in the case of national security actions.

Under subsection (c) the President may treat as an increase in duty for purposes of import relief the suspension of duty-free treatment under subsection (a). As provided under subsection (d), the President may suspend duty-free treatment as the sole import relief measure (without imposing relief generally) only if the ITC, in addition to making an affirmative determination, determines in the course of its import relief investigation that the serious injury to a domestic industry substantially caused by imports results from duty-free treatment on imports from Israel. These provisions are identical to present law with respect to GSP imports.

Subsection (e) provides that import relief measures or adjustments to imports to protect the national security in effect at the time duty-free treatment is proclaimed under section 2(b)(1) of the bill would continue in effect until modified or terminated. However, the President may terminate or modify existing import relief with respect to imports from Israel prior to its otherwise scheduled termination or reduction date if he determines such action to be in the national interest after following the procedures in section 203(h) and (i) of the Trade Act, which require that he obtain the advice of the ITC, the Secretary of Labor, and the Secretary of Commerce.

*Section 5. Emergency relief for imports of agricultural perishable products*

Section 5 of H.R. 5377 as amended, establishes a special procedure identical to the provisions of section 213(f) of the Caribbean Basin Economic Recovery Act to provide interim emergency relief during the pendency of a normal import relief proceeding from imports of agricultural perishable products from Israeli accorded duty-free treatment under the trade agreement authorized by section 2. This provision is a recognition of the unique nature of agricultural perishables and a response to concerns expressed to the Committee by domestic specialty crop interests about the possible consequences of duty-free treatment of agricultural perishables from Israel.

If a petition for relief from imports of an agricultural perishable product from Israel is filled with the International Trade Commission under section 201 of the Trade Act of 1974, the petitioners may also file with the Secretary of Agriculture a request for emergency relief. Within 14 days the Secretary must determine whether there is "reason to believe" a perishable product from Israel is being imported in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry

producing a like or directly competitive product. The Secretary must then advise the President and recommend emergency relief if warranted, or publish notice and advise the petitioner of his determination not to recommend emergency action. Within 7 days after he receives a recommendation for emergency relief from the Secretary of Agriculture, the President must issue a proclamation withdrawing the duty-free treatment or publish a notice of his determination not to take action.

Emergency relief under this provision would be limited to the restoration of normal rates of duty. The President may not proclaim higher rates during the emergency period, nor may he proclaim an intermediate rate of duty. The emergency action ceases to apply on the date that one of four conditions is met:

a. Final import relief is declared;

b. The President determines not to grant final import relief;

c. The ITC submits a report to the President containing a negative finding on a request for import relief; or

d. Whenever the President determines that due to changed circumstances such relief is no longer warranted.

Subsection (e) defines the term "perishable product" to include live plants, most fresh or chilled vegetables, fresh mushrooms, most fresh fruit, fresh cut flowers, and concentrated citrus fruit juice.

The purpose of this emergency expedited relief procedure is to safeguard against the effects of a sudden influx of agricultural imports as a result of granting duty-free treatment. If such imports were to cause sudden injury to domestic producers of perishable goods by depriving them of an opportunity to sell such products, the normal six-month investigation for standard import relief would not afford a meaningful remedy. By the time relief is obtained, the goods in question would no longer be marketable. This provision would merely restore the tariff treatment which existed prior to the granting of duty-free entry until a final decision on import relief can be made, thereby assuring some degree of protection for domestic growers against a possible sudden surge of duty-free imports.

In order to respond quickly to requests for emergency relief, the Department of Agriculture should apply procedures to Israel similar to those the Committee expected to be established under the CBI for maintaining update information on imports and domestic production of perishable products on a continuing basis, simplified procedures for filing petitions for relief, and exchange of information with the U.S. Customs Service.

Section 5 supplements existing import relief law (sections 201-203 of the Trade Act of 1974), which does not provide for emergency relief with respect to perishable goods. However, pursuant to section 22 of the Agricultural Adjustment Act of 1933, the President may, upon recommendation of the Secretary of Agriculture, determine that emergency conditions warrant the imposition of fees or quotas on agricultural products to protect a price support program pending the outcome of a full investigation. Section 22 contains similar requirements to those in section 5, including a requirement that the Secretary of Agriculture determine that there is a "reason to believe" that imports may cause harm.

Finally, subsection (f) provides that no proclamation issued under section 2(b)(1) shall affect fees imposed under section 22 of the Agricultural Adjustment Act. Section 22 authorizes the President to impose import fees of up to 50 percent ad valorem if he finds that a particular product is being imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfer with any domestic price support program or substantially reduce domestic support by such a program.

Subsection (f) makes clear that fees are to be imposed pursuant to section 22 without regard to the proclamation authority under section 2(b)(1). Thus, imports of commodities may enter the United States duty-free pursuant to the trade agreement with Israel but nevertheless be subject to fees, as are all othe imports of the same commodity. However, Israel would maintain a relative duty advantage over other imports, at the same time the President uses section 22 to protect price support programs.

*Section 6. Application of other laws*

Section 6 of H.R. 5377, as amended, clarifies the relationship between the trade agreement authjorized by section 2 of this Act and other existing trade laws.

Subsection (a) makes clear that neither the taking effect of, any trade agreement provision entered into under section 2(a)(1), nor any proclamation issued under section 2(b)(1) relating to duty-free treatment of Israeli articles may affect in any manner or to any extent the application to Israeli articles of existing laws under which relief from injurious import competition or unfair trade practices may be sought. Such laws include relief under section 232 of the Trade Expansion Act of 1962 from imports threatening national security, relief under section 337 and the countervailing duty and antidumping provisions of the Tariff Act of 1930 from unfair import competition and subsidies and dumping practices, relief from injurious import competition under sections 201–203 of the Trade Act of 1974, enforcement of U.S. rights under trade agreements and response to unfair foreign trade practices under section 301 of the Trade Act of 1974, and any other provision of law providing relief from injurious import competition or unfair import trade practices.

Subsection (a) guarantees the U.S. industrties and workers will be afforded the same avenues for obtaining relief and the same remedies from potential injurious competition or unfair trade practices with respect to imports from Israel that persently exist for such imports, irrespective of the granting of duty-free treatment under a free trade area agreement. Any countervailing duty or antidumping duty orders outstanding on a particular article imported from Isreal on the date duty-free treatment or any intermediate rate of duty during the phase-in of the trade agreement becomes effective would continue to apply. A duty would be assessed in the amount of the countervailing or antidumping duty in addition to the existing duty, if any, until the order is revoked. Similarly, the amount of any countervailing or antidumping duty-free treatment or an interim rate of duty under the free trade area agreement would be assessed on imports of the particular article

from Israel in addition to the interim duty or in lieu of duty-free treatment under the trade agreement.

Article XXIV of the GATT permits the creation of free trade areas as a derogation from the general rule under Article I that all GATT Contracting Parties are entitled to nondiscriminatory, most-favored-nation (MFN) trading treatment of their products. Such duty-free treatment is permitted only for the products traded between the parties to a free trade area which meets certain standards under Article XXIV. Countries entering into such arrangements are not obliged automatically to extend duty-free treatment to other GATT member countries on products covered by the agreement.

However, Members of the Committee have expressed considerable concern that a free trade area with Israel might result in extension of similar duty-free treatment to imports from other countries under provisions of bilateral treaties and executives agreements, or create a precedent for entering into additioal free trade arrangements. Consequently, the Committee included section 6(b) in H.R. 5377 as amended stating that, notwithstanding any other provision of law, no duty-free treatment or other trade benefit can be accorded to any country other than Israel by reason of the agreement authorized by this Act. Subsection (b) precludes any possibility, as a matter of domestic law, of extension through court decision or executive action of duty-free treatment to other countries pursuant to any existing treaties or executive agreements without further Congressional approval.

Any free trade areas with other countries could not be concluded or proclaimed by the President without Congressional consideration of the merits on a case-by-case basis and passage of authorizing legislation. At the same time, Committee makes clear that it does not preclude the possibility of future legislation to implement provisions of existing bilateral treaties or executive agreements and, in fact, would give consideration to initiative from other countries requesting reciprocal and mutual advantageous trade agreements.

### VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 5377 was ordered favorably reported by the Committee on Ways and Means to the House by a roll call vote of 33 yeas, 0 noes with an amendment.

### OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee concludes on the basis of hearing testimony and a recent fact-finding visit to Israel by some of its Members, that establishment of a free trade area between the United States and Israel under the provision of the bill would be in the economic interest of both countries.

In regard to clause 2(l)(3)(D) of rule XI of the rules of the House of Representatives, no oversight findings or recommendations have

been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rules XIII and with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5377, as amended, does not provide new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rules XIII and with clause 2(l)(3)(B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 5377, as amended, and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 26, 1984.*

Hon. DAN ROSTENKOWSKI,
*Chairman, Committee on Ways and Means,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined H.R. 5377, an act to create a U.S.-Israel Free Trade Area, as approved by the Committee on Ways and Means. The bill would authorize the President to enter into a reciprocal and mutually advantageous trade agreement with Israel. Specifically, the bill would authorize negotiation to harmonize, to reduce, or to eliminate tariff as well as non-tariff trade barriers.

The scope and content of a potential trade agreement with Israel cannot be known at this time. Therefore, it is impossible to estimate the potential costs or revenue effects of this bill.

With best wishes.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5377 as amended would not have an inflationary impact on prices and costs in the operation of the general economy.

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